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11 **IN THE UNITED STATES BANKRUPTCY COURT**  
12 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

13 In re: )

14 JAMES S CARD, )

15 Debtor. )

Case No. 2:09-bk-22479-CGC

Chapter 13

16 WELLS FARGO BANK, N.A., )  
17 SUCCESSOR BY MERGER TO )  
18 WELLS FARGO BANK SOUTHWEST, )  
19 N.A. FORMERLY KNOWN AS )  
20 WACHOVIA MORTGAGE, FSB, )  
21 FORMERLY KNOWN AS WORLD )  
22 SAVINGS BANK, FSB )

23 Movant, )

24 vs. )

25 JAMES S CARD, Debtors; )  
26 and EDWARD J. MANEY, Trustee, )

27 Respondents. )

RESPONSE TO MOTION  
FOR RELIEF FROM  
AUTOMATIC STAY

RE: Real Property Located at  
2343 E Riverdale Circle  
Mesa, AZ 85213

COMES NOW the debtor, JAMES S CARD, by and through counsel undersigned, and hereby responds and objects to Movant WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO BANK SOUTHWEST, N.A. FORMERLY KNOWN AS WACHOVIA MORTGAGE, FSB, FORMERLY KNOWN AS WORLD SAVINGS BANK, FSB's Motion for Relief from the Automatic Stay as follows:

1. Movant's motion fails to follow Bankruptcy rule 4001-1(a) which states, "the caption shall contain a brief description of the property";
2. The note and Deed of Trust are in the name of World Savings Bank. Although Movant's caption suggests that World Savings Bank was acquired by Movant, the Motion does not expressly state that it was. Nor does Movant provide any documentation to the Court to demonstrate that this series of acquisitions/name changes occurred.

A litigant must have both constitutional standing and prudential standing for a federal court to have jurisdiction to hear the case. Elk Grove Unified Sch. Dist. V. Newdow, 542 U.S. 1, 11 (2004).

Constitutional standing requires an injury be fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. United Food & Drug Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 551 (1996). For prudential standing, the litigant must assert its own legal rights and interests, Oregon v. Legal Servs. Corp., 552 F.3d 965, 971 (9th Cir. 2009).

1 Also, an action must be prosecuted by the real party in interest.  
2 Fed. R. Civ. P. Rule 17(a)1. The holder of the note is the only entity  
3 entitled to enforce it. A.R.S. § 47-3301. The holder is defined as “the  
4 person in possession of a negotiable instrument that is payable either to  
5 bearer or to an identified person that is the person in possession.”  
6 A.R.S § 47-1201(B)(21)(a).  
7

8 Movant has not provided a scintilla of evidence that they came to  
9 be the holder of the note. On the contrary, from the documents  
10 provided to the Court it appears that World Savings Bank is the holder  
11 of the note. Therefore, Movant is not the real party in interest and does  
12 not have standing to bring this action;  
13

14 3. Movant calculates that there is \$33,837.07 in equity and then comes to  
15 the conclusion that “...there is little to no equity in the Real Property to  
16 be realized by the Debtor or the bankruptcy estate.” Debtor believes  
17 that \$33,837.07 is a significant amount of equity. This is particularly  
18 true here where it would be a significant percentage of the remaining  
19 debt owed; and  
20

21 4. The property is necessary for a successful reorganization. The home is  
22 the Debtor’s primary residence.  
23

24 Debtors respectfully requests that the Movant’s Motion for Relief from the  
25 Automatic Stay be denied.  
26  
27  
28

1 RESPECTFULLY SUBMITTED this 13th day of April, 2010.

2  
3 JOSEPH W. CHARLES, P.C.

4  
5 By /s/ Joseph W. Charles  
6 JOSEPH W. CHARLES  
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8 P.O. Box 1737  
9 Glendale, Arizona 85311  
10 Attorney for Debtors  
11

12 COPY of the foregoing  
13 mailed this 13<sup>th</sup> day of  
14 April, 2010, to:

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21 Edward J. Maney  
22 P.O. Box 10434  
23 Trustee

24 By: /s/ C. Short  
25  
26  
27  
28